

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER 97-0286 FIT**  
**FINANCIAL INSTITUTIONS TAX**

**For Tax Periods: 1992 Through 1994**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning specific issues.

**ISSUES**

**I. Financial Institutions Tax: Nexus**

**Authority:** IC 6-5.5-2-1, IC 6-5.5-2-4, IC 6-5.5-3-1.

Taxpayer protests the determination of receipts attributable to Indiana.

**2. Tax Administration: Penalty**

**Authority:** IC 6-8.1-10-2 (a).

Taxpayer protests the imposition of a penalty.

**Statement of Facts**

Taxpayer and its consolidated subsidiaries provide diverse financial [products and services to individuals, businesses, government agencies, and financial institutions throughout the world.

**1. Financial Institutions Tax: Nexus**

**Discussion**

Taxpayer files an Indiana Financial Institutions tax return on a unitary basis with its subsidiaries. Following an audit of Taxpayer covering taxable years 1992-1994, the

Indiana Department of Revenue proposed adjustments to the numerator of the receipts factor of Taxpayer and a number of subsidiaries that filed as part of the unitary group.

Pursuant to IC 6-5.5-2-1, Indiana imposes a franchise tax on financial institutions. That tax is measured by the adjusted gross income or apportioned income of the financial institutions. IC 6-5.5-2-4 provides that if a taxpayer files a combined return for its unitary group, the group's apportioned income consists of:

- (1) the aggregate adjusted gross income, from whatever source derived, of the unitary group; multiplied by
- (2) the quotient of:
  - (A) all the receipts of the resident taxpayer members of the unitary group from whatever source derived plus the receipts of the nonresident taxpayer members of the unitary group that are attributable to transacting business in Indiana; divided by
  - (B) the receipts of all the members of the unitary group from transacting business in all taxing jurisdictions.

In the audit, the Indiana Department of Revenue Auditor adjusted Taxpayer's numerator in the receipts factor. The adjustments relate to 1) loan interest and fees, (2) credit card receipts, and (3) merchant fees. The proposed subsidiary adjustments relate to Indiana customer based receipts.

Taxpayer contends that these adjustments are in error because Taxpayer and its subsidiaries did not have a physical presence in the state and therefore cannot constitutionally be subject to Indiana Financial Institutions Tax. An administrative hearing in the Indiana Department of Revenue is not the proper forum to challenge the constitutionality of the Indiana Financial Institutions Tax. IC 6-5.5-3-1 establishes an economic requirement for determining if a taxpayer has sufficient nexus to subject them to the Indiana Financial Institutions Tax. Taxpayer meets the criteria of this test for nexus. Taxpayer regularly solicits business from potential customers in Indiana and regularly sells products or services to customers in Indiana who receive the product or service in Indiana. Pursuant to this statute, taxpayer has a sufficient nexus with Indiana to allow the imposition of the Indiana Financial Institutions Tax.

### **Finding**

Taxpayer's protest is denied.

## **2. Tax Administration: Penalty**

### **Discussion**

Taxpayer protests the assessment of the ten per cent negligence penalty applied pursuant to IC 6-8.1-10-2 (a). Taxpayer had a duty to compute its taxes based upon the

Indiana statutory economic definition of nexus. Taxpayer breached this duty. Therefore the negligence penalty properly applies in this situation.

**Finding**

Taxpayer's protest is denied.

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